



UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
P.O. BOX 1450
ALEXANDRIA, VA 22313-1450
www.uspto.gov

BRINKS HOFER GILSON & LIONE
P.O. BOX 10395
CHICAGO, IL 60610

COPY MAILED

MAR 3 0 2005

OFFICE OF PETITIONS

In re Application of	:	
William Park, Vaughn Marian	:	
David Petersen, Todor Sheljaskow,	:	
Mursaid Bolorforosh,	:	
Worth Walters, and Sevig Ayter	:	
Application No. 10/800,950	:	DECISION REFUSING STATUS
Filed: March 15, 2004	:	UNDER 37 CFR 1.47(a)
Attorney Docket No. 2003P19072US	:	
FOR: SYSTEM AND METHOD FOR	:	
ACTIVELY COOLING TRANSDUCER	:	
ASSEMBLY ELECTRONICS	:	

This is a decision on the PETITION TO PERMIT FILING A PATENT APPLICATION WHEN AN INVENTOR REFUSES OR CANNOT BE REACHED TO SIGN THE OATH OR DECLARATION (37 C.F.R. § 1.47)," filed November 30, 2004.

The petition under 37 CFR 1.47(a) is **DISMISSED**.

Rule 47 applicants are given **TWO MONTHS** from the mailing date of this decision to reply, correcting the below-noted deficiencies. Any reply should be entitled "Request for Reconsideration of Petition Under 37 CFR 1.47(a)," and should only address the deficiencies noted below, except that the reply may include an oath or declaration executed by the non-signing inventor. **Failure to respond will result in abandonment of the application.** Any extensions of time will be governed by 37 CFR 1.136(a).

The above-identified application was filed on March 15, 2004, without an executed oath or declaration. On June 1, 2004, applicants were mailed a "Notice to File Missing Parts of Nonprovisional Application," requesting an executed oath or

declaration and the surcharge for its late filing. This Notice set a two-month period for response, with extensions of time obtainable under § 1.136(a).

On November 30, 2004, applicants filed the instant petition, made timely by an accompanying petition and fee for extension within the fourth month. The petition included the late surcharge and authorization to charge any required fees to a Deposit Account. Pursuant to this authorization, the petition fee has been charged to the Deposit Account. Accompanying the petition was a declaration executed by joint inventors Park, Marian, Petersen, Sheljaskow, Walters and Ayter on behalf of themselves and on behalf of non-signing joint inventor Bolorforosh. Petitioner states that status under § 1.47(a) is proper because inventor Bolorforosh refuses to join in the application.

A grantable petition under 37 CFR 1.47(a) requires: (1) proof that the non-signing inventor cannot be reached or found, after diligent effort, or refuses to sign the oath or declaration after having been presented with the application papers (specification, claims and drawings); (2) an acceptable oath or declaration in compliance with 35 U.S.C. §§115 and 116; (3) the petition fee; and (4) a statement of the last known address of the non-signing inventor. The petition does not satisfy requirement (1).

Rule 47 applicants have failed to show that the non-signing inventor refused to sign the declaration after having been presented with the application papers. Patent Attorney Jenny Ko presents evidence that the application papers were mailed to inventor Bolorforosh at an address in California. The evidence does not indicate that the papers were sent certified mail return receipt, or by any other means, which would provide for acknowledgment of receipt by signature of recipient. Moreover, attorney Ko includes evidence indicating that the address used is inappropriate. In an email to Human Resources, attorney Ko states "I've heard that this address is no longer applicable, as he may have moved to Schenectady, NY." Yet, unable to obtain a forwarding address from Human Resources, attorney Ko continues to attempt to reach inventor Bolorforosh at the California address. Applicant's evidence confirms mailing of the application papers, but not receipt by non-signing inventor Bolorforosh. Moreover, applicant has not submitted direct evidence of refusal. The presentation of the application papers to an address at which the attorney believes is no longer applicable does not serve as adequate support for a claim of refusal by conduct. A showing that an inventor has not

responded to a communication that he has not received is not sufficient to show refusal to join in the application by conduct; on those facts, refusal cannot be inferred.

Under such circumstances, status under §1.47(a) is properly sought with a showing that the non-signing inventor cannot be reached or found, after diligent efforts, to execute the declaration. In this instance, applicant has not shown diligent efforts to locate inventor Bolorforosh. There is no indication that Rule 47 applicants took further action to determine inventor Bolorforosh's forwarding address, and to send the application papers to that address for consideration by inventor Bolorforosh. See MPEP 409.03(d). If attempts to obtain a forwarding address or to locate the non-signing inventor by other means such as through E-mail, telephone, or the Internet continue to fail, then applicants will have provided the necessary proof required under 37 C.F.R. §1.47 that the inventor cannot be reached. Details of the efforts to locate non-signing inventor Bolorforosh should be set forth in an affidavit or declaration of facts by a person with first hand knowledge of the details. Applicants should submit documentary evidence such as the results of an E-mail or Internet search.


Further correspondence with respect to this matter should be addressed as follows:

By mail: Mail Stop Petition
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

By fax: (703) 872-9306
ATTN: Office of Petitions

By hand: Customer Service Window
Randolph Building
401 Dulany Street
Alexandria, VA 22314

Telephone inquiries related to this decision may be directed to the undersigned at (571) 272-3219.



Nancy Johnson
Senior Petitions Attorney
Office of Petitions